

REMARKS

At the time the present Final Office Action was mailed (August 11, 2005), claims 1-18 and 26-51 were pending in the above-captioned application. Of these claims, claims 3, 5-9, 12, 14-18, 26-42, and 49-51 were withdrawn. In the present response, withdrawn claims 5, 34, 42 and 49-51 have been amended, as have claims 1, 4, 43 and 45. Claims 10-18, 26-33, and 44 have been cancelled. Accordingly, claims 1-9, 34-43, and 45-51 are currently pending.

In the Final Office Action, claims 1, 2, 4, 10, 11, 13, and 28 were rejected, and claims 43-48 were objected to. More specifically, the status of the application in light of this Office Action is as follows:

- (A) Claims, 1, 4, 10, and 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,463,328 to John et al. ("John");
- (B) Claims 2 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of U.S. Patent No. 5,938,688 to Schiff et al. ("Schiff"); and
- (C) Claims 43-48 stand objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten to be in independent form.

The undersigned attorney wishes to thank the Examiner for engaging in a telephone interview on November 1, 2005. During the interview, the undersigned attorney and the Examiner discussed amending claim 34 to include subject matter from claim 44. The Examiner indicated that such an amendment would place claim 34 in condition for allowance. The undersigned attorney and the Examiner also discussed an amendment to claim 45 to clarify the claim. The Examiner indicated that such an amendment would not change the objected-to status of the claim. Claim 45 has been so amended, and has also been amended to be in independent form.

A. Response to the Section 102 Rejections

Claims 1, 4, 10, and 13 were rejected under 35 U.S.C. § 102(b) as being anticipated by John. Claims 10 and 13 have been cancelled without commenting on or conceding the merits of the Examiner's rejections, and without prejudice to pursuing these claims in a continuation or other application. Accordingly, the Section 102 rejections of these claims are now moot. Claim 1 has been amended to include the elements of dependent claim 44, which was indicated to be allowable if rewritten to be in independent form. Accordingly, the Section 102 rejection of claim 1 should be withdrawn. Claim 4 depends from claim 1, and accordingly the Section 102 rejection of claim 4 should be withdrawn for the foregoing reasons and for the additional features of this dependent claim. Please note that claim 4 has been amended without narrowing the scope of the claim to clarify certain aspects of the claim.

B. Response to the Section 103 Rejections

Claims 2 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Schiff. Claim 11 has been cancelled, without commenting on or conceding the merits of the Examiner's rejection, and without prejudice to pursuing these claims in a continuation or other application. Accordingly, the Section 103 rejection of claim 11 is now moot. Claim 2 depends from claim 1 which, as discussed above, is patentable over the applied references. Accordingly, the Section 103 rejection of claim 2 should be withdrawn for the foregoing reasons and for the additional features of this dependent claim.

C. Response to the Indication of Allowable Subject Matter

Claims 43-48 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form. Claim 44 has been cancelled, and so the objection to claim 44 is now moot. Claims 43 and 45 have been rewritten to be in independent form, and accordingly, these claims are now in condition for

allowance. Claim 45 has also been amended in a manner consistent with that discussed with the Examiner during the November 1, 2005 telephone interview to clarify that the patient is exposed to a peripheral stimulus expected to trigger a neural function. Claims 46-48 depend from claim 45, and accordingly, are now in condition for allowance.

D. Request for Examination of Withdrawn Claims

Applicants expressly request consideration and allowance of previously withdrawn dependent claims that depend from claims that should now be in condition for allowance. These claims include claims 3 and 5-9 (which depend from claim 1), claim 34 (which has been amended in accordance with the agreement reached between the Examiner and the undersigned attorney during the November 1 telephone interview), claims 35-42, (which depend from claim 34), and claims 49-51 (which previously depended from claim 28 and have been amended to depend from claim 1). Please note that claims 5 and 42 have been amended without narrowing the scopes of the claims to clarify certain aspects of the claims.

E. Conclusion

In view of the above amendments and remarks, applicants believe the pending application is in condition for allowance.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0665, under Order No. 337348020US4 from which the undersigned is authorized to draw.

Application No. 10/072,700
Amendment dated November 10, 2005
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Respectfully submitted,

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